always hold that the title has passed, since a *bona fide* purchaser from the vendor would probably be protected.[7] This suggests the second objection. Since the vendor could thus cut off the vendee's interest, leaving him only an action at law which insolvency would render worthless, it is unjust to compel payment without more adequately securing his interest in the property. Lastly, it may be urged that the vendee, on default of the vendor, has no similar right to demand delivery of the manufactured article; and surely his right should not be inferior to the seller's. A court of law cannot order the vendor to transfer; nor can the vendee bring replevin.

These difficulties encountered by common law courts because of their procedure are overcome by allowing an action in equity should specific performance in such cases be advisable. This remedy obviates the first difficulty, since equity will force the defendant to take the title. Nor can the second objection be urged, since a court of equity will grant relief by compelling concurrent performance by the seller and the buyer.[8] Finally, the vendee by coming into equity could force the vendor to transfer the property and thus overcome the last objection.

The first two of these objections apply equally where rescission of an executed contract is allowed for breach of warranty. Moreover, there are objections to allowing this, even in equity. It has been urged that mercantile custom and justice demand such a remedy.[9] While admittedly goods are often returnable, it is only on the understanding that the vendee will receive goods of the proper kind in their place, for the vendor would hardly be willing that he return the goods absolutely, and thus escape a bad bargain. Under such circumstances there is an actual contract of rescission, which would seem to be the custom of merchants; but the rescission allowed by the Massachusetts courts would not permit the vendor to offer proper goods in exchange.[10] Again, it is urged that it is unjust of the vendor to insist upon his bargain when he has not furnished the proper goods,[11] but is it not more inequitable for the vendee to use this breach of warranty to avoid the consequences if the contract is unprofitable? It is not so unjust on the part of the vendor, since he is ready to respond in damages which adequately recompense the vendee.[12]

ADMIRALTY JURISDICTION OF TORTS. — The jurisdiction of the admiralty court in England as set forth in the ancient royal grants was sufficiently broad in scope to comprehend all maritime affairs.[1] But after a struggle against the jealousy of the common law courts, particularly in the sixteenth

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[7] For necessity of change of possession, see Williston, Cas. Bankruptcy 169, n. 1.

[8] See Langdell, Brief Survey of Equity Jurisdiction 46–47; 1 HARV. L. REV. 361, 362.

[9] Professor Williston in 16 HARV. L. REV. 465–475, where all the authorities are collected. See also articles by Professor Burdick and Professor Williston in 4 Columbia L. Rev. 1, 195, 265.

[10] This must follow. Since it has been decided that the buyer cannot also bring an action for damages, it would hardly be just to allow a seller in default an option to offer goods of the proper kind. See Professor Williston's Draft of Sales Law, sec. 54 (2). This is not the case where the contract is executory. 16 HARV. L. REV. 474, n. 1.

[11] 16 HARV. L. REV. 474.

[12] 16 HARV. L. REV. 475.

[1] Benedict, Admiralty Prac., 3d ed., § 110.

and seventeenth centuries, it was seriously narrowed, so that as to contracts and torts it included only those which were consummated upon the sea.[2] Later, this rule, based solely on locality, was somewhat relaxed as to contracts.[3] In the United States, admiralty jurisdiction has always been considered more comprehensive than was the English jurisdiction at the time of the adoption of our Constitution.[4] In contracts our courts have disregarded the locality test, and have considered simply whether the transaction is of a maritime nature.[5] But as to torts they continued until recently to limit their jurisdiction by locality so as to exclude a tort by a vessel to things on land and to include a tort by things on land to a vessel.[6]

A comparatively late case, however, has required that the tort shall also be maritime in nature.[7] This decision, although directly overruling no previous cases, because, as a matter of fact, in all of them the tort was fairly maritime, was an important limitation in the direction of assimilating the jurisdiction of contracts and of torts. It meant that the locality test had given way to the universal test of the maritime character of the event, except in the one class of cases in torts of injury by a vessel to some person or thing on land. And the Supreme Court of the United States seems now to have abolished this exception by taking jurisdiction of damage by a faulty vessel to a beacon light solidly attached to the bottom of the sea. *United States* v. *Evans*, 25 Sup. Ct. Rep. 46. Although the majority of the court carefully confine themselves to the exact facts before them, Mr. Justice Brown, concurring, seems justified in his conclusion that the decision cannot logically stop half-way, but really brings the United States into line with the present statutory jurisdiction in England in including "any claim for damage done by a ship."[8] If that is true, then the locality test is finally abandoned and the maritime character of the transaction is made the sole test. This result is commendable. As a matter of first principles it seems equally logical for admiralty to exclude the non-maritime and to include the maritime. It may be objected that these two recent cases establish an indefinite test that will increase the perplexity and uncertainty of the jurisdiction. But no serious difficulty has been remarked in determining what contracts are maritime, and torts would seem equally amenable. Furthermore, there appears to be as much reason in sense and justice for this change as existed in the case of contracts. Just as admiralty should include a contract of marine insurance made on land and should exclude a mortgage of realty made at sea, so it should include damage to a pier by the faulty navigation of a ship and should exclude slander by one passenger of another.[9]

LIABILITY OF BANK TO DEPOSITOR AFTER COLLECTION OF DRAFT BY CORRESPONDENT. — When a draft deposited for collection at a distance is forwarded by the depositary bank to its correspondent, and the latter, after collecting, fails to account, the depositary bank is by the majority of

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[2] See De Lovio *v.* Boit, 2 Gall. (U. S. C. C.) 398, 403 ff.
[3] See Insurance Co. *v.* Dunham, 11 Wall. (U. S.) 1, 24.
[4] See De Lovio *v.* Boit, 2 Gall. (U. S. C. C.) 398, 472.
[5] Insurance Co. *v.* Dunham, 11 Wall. (U. S.) 1.
[6] The Plymouth, 3 Wall. (U. S.) 20; Hermann *v.* Port Blakely Mill Co., 69 Fed. Rep. 646.
[7] Campbell *v.* Hackfeld & Co., 125 Fed. Rep. 696 (1903).
[8] Admiralty Court Act of 1861, 24 Vict. c. 10, § 7; The Swift, [1901] P. 168.
[9] Benedict, Admiralty Prac., 3d ed., § 308.